## REMARKS/ARGUMENTS

In view of the amendments and remarks herein, favorable reconsideration and allowance of this application are respectfully requested. By this Amendment, claims 1, 6, 8, 11, 17, and 19 are amended. Thus, claims 1, 6, 8, 10-11, 17, 19, and 21 are pending for further examination.

Claims 1, 6, 8, 10, 11, 17, 19 and 21 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Gever et al. (U.S. Patent No. 6,329,994), as well as under 35 U.S.C. § 103(a) as allegedly being unpatentable over Naka et al. (U.S. Patent No. 5,963,218) in view of Sasaki (U.S. Patent No. 5,577,960). The Examiner is thanked for providing a detailed "Response to Arguments" section on pages 7-9 of the Office Action. However, as explained in further detail below, Applicant respectfully submits that the prior art of record, alone and in combination, still fails to anticipate or render obvious the invention defined by the claims.

With respect to the Section 102 rejection based on Gever, page 3 of the Office Action indicates that the limitations of automatically jumping, climbing, and switching virtual cameras "are inherent from Gever et al.'s teaching of [a] user interface allowing the user to create scripts and define animation sequences including motion paths, sound and interactions of the smart objects with one another (6:45-60)(5:8-6:45)." However, Applicant respectfully submits that this argument based on inherency is improper as a matter of U.S. patent law. "Inherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981). *See also Ex parte Skinner*, 2 USPQ2d 1788, 1789 (BPAI 1986) ("[T]he examiner must provide some evidence or scientific reasoning to establish the reasonableness of the examiner's belief that the functional limitation is an inherent characteristic of the prior art" before the burden is shifted to the applicant to disprove the inherency.). Furthermore, the Board of Patent Appeals

and Interferences recently issued the precedential opinion *Ex Parte Whalen II*, Appeal No. 2007-4423, decided on July 23, 2008, which stated that "The Examiner has not provided evidence or scientific reasoning to show that any specific composition disclosed by Evans is within the scope of the instant claims, and therefore has not made out a case of inherent anticipation by Evans."

Here, Gever does state that one smart object may be made to interact with another smart object (which may be a smart object or other object) by means of a script. However, it is by no means "inherent" in Gever that these scripts trigger the automatic jumping, climbing, and switching virtual cameras by means of corresponding codes embedded in the objects other than the smart objects themselves. For example, with respect to claim 1, Gever does not explicitly or inherently disclose "caus[ing] the player object to automatically jump over one of said hollow and said hole formed by the land object image data according to said jump distance when the jump code [included in the land object image data] is detected." The mere possibility of a having a script embedded in a smart object for causing that particular or another object to react in a particular way is not enough to establish a case of inherency with respect to the limitations in question. Because Gever does not explicitly or inherently disclose each and every limitation recited in the claims, it does not anticipate the claimed invention.

Furthermore, Applicant respectfully notes that the Examiner's arguments in the "Response to Arguments" section that relate to Gever improperly "stretch" the teachings thereof beyond the bounds of credulity. For example, similar to the above, Applicant previously argued that the Examiner does not identify any portion of Gever in which a script associated with a first object causes an action in a second object. That is, the Examiner does not identify any portion of Gever that teaches a script associated with object (or sub-object) 1 defining an action of object 2. In response, and as above, the Examiner now points to col. 5, line 8 to col. 6, line 60. However,

this lengthy portion of Gever merely teaches that objects may interact with each other, without indicating that a script associated with a first object causes an action in a second object.

The Examiner responds to the argument that Gever does not automatically switching cameras by arguing that Gever "teaches [a] user interface software application allowing the user to create scripts that defines [sic] camera angles and simulated lighting characteristics that are applied in rendering the animation of sequences (6:46-40)." Although the claim language and this cited portion of Gever are similar in that they both concern virtual camera actions, there is a difference between "automatically switch[ing] between said plurality of virtual cameras dependent upon said camera switching code detected by said camera switching code detector" and changing the angle of a single camera.

Finally, in response to the argument that Gever does not teach or suggest automatically switching sound, the Examiner notes that Gever teaches "Smart Objects having embedded voice (4:59-5:5) and is [sic] capable of react [sic] or interact [sic] with elements in the windows. . . ." Yet, Applicant notes that the cited portion of Gever merely discloses that Smart Objects may have "personalities" comprising a voice. That is, this cited portion of Gever still does not disclose a code in a second object for causing sound switching in a first object.

In view of the above, Applicant respectfully submits that Gever fails to anticipate the invention defined by the claims. Thus, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the Section 103 rejection based on the alleged Naka/Sasaki combination, Applicant continues to believe that the previously submitted amendments and arguments traverse the outstanding ground of rejection. Thus, Applicant will not repeat the same herein. Rather, the

balance of the arguments contained herein response to the new allegations made in the "Response to Arguments" section of the Office Action.

On page 9 of the Office Action, the Examiner now argues that the climbing, jumping, camera switching, and sound generating limitations "are notoriously well known in the video game industry, e.g., video game auto-play or demo mode." First, Applicant notes that this bare allegation is unsupported by any factual finding of record. That is, the Examiner has not pointed to anything in the prior art of record in support of this bare allegation, nor has the Examiner even resorted to an argument based on inherency or Official Notice. Second, Applicant notes that such teachings do not make up for the deficiency in the Naka/Sasaki combination, at least because the bare allegation does not provide any indication concerning control codes of any kind -- much less relying on a code in one object to affect a second object in the claimed way.

Findings of obviousness cannot be supported by mere allegations, absent some articulated reasoning. Here, the Examiner has only offered bare allegations without any reasoning how or why this purported "teaching" is being introduced to the combination of Naka and Sasaki. Moreover, even if the Examiner's allegation is true (i.e., that climbing, jumping, camera switching, and sound generating limitations "are notoriously well known in the video game industry, e.g., video game auto-play or demo mode"), the Examiner merely states that a more interesting video game apparatus would be produced. Applicant respectfully submits that one of ordinary skill in the art at the time of the invention would not have introduced an auto-play or demo mode teachings into a live game play scenario. Contrary to the Examiner's allegation, Applicant believes that one of ordinary skill in the art at the time of the invention would not have looked to scripted auto-play or demo mode techniques when coming up with way of enhancing functionality of the game play itself. Furthermore, the alleged motivation behind combination

lacks merit, as it seems quite odd to say that introducing auto-play or demo mode techniques into Naka and/or Sasaki would make a game more interesting.

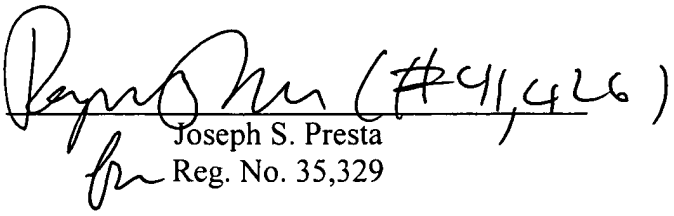
In any case, Applicant has proffered several minor claim amendments to make clear that the claims relate to a video game apparatus in which a game progresses according to actual operation by the player, thus foreclosing any arguments related to auto-play games and demonstration mode techniques.

In view of the above, Applicant respectfully submits that the alleged Naka/Sasaki two-way combination fails to render obvious the invention defined by the claims. Thus, reconsideration and withdrawal of this rejection are respectfully requested.

In view of the foregoing amendments and remarks, withdrawal of the rejections and allowance of this application are earnestly solicited. Should the Examiner have any questions regarding this application, or deem that any formalities need to be addressed prior to allowance, the Examiner is invited to call the undersigned attorney at the phone number below.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: 
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